

S.B. CIVIL SECOND APPEAL NO.189/2005

Surendra Kumar vs. Abbas Ali.

Date : 26.7.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Usman Ghani, for the appellant.

Mr. Ravi Bhansali, for the respondent.

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Heard learned counsel for the parties.

The suit of the plaintiff was decreed by the Trial Court for eviction of the appellant/tenant on the ground of personal bonafide need of the plaintiff.

According to learned counsel for the appellant, the plaintiff has not only a big house to live but he has other properties still the trial court as well as first appellate court decreed the suit of the plaintiff for eviction. It is also submitted that the son of the plaintiff, who appeared in the witness box, also got the vacant possession of the property and, therefore, also the plaintiff failed to prove any need.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by the two courts below.

It appears from the facts mentioned in the judgment dated 28.10.2002 of the trial court and the appellate judgment dated 23.3.2005 and which are not in dispute that the defendant himself admitted in cross examination that the plaintiff is residing with his father and brother in upper floor of a house and lower floor is in possession of the tenant. The other properties which were suggested by the defendant to be of plaintiff, the defendant himself admitted that in those properties, the tenants are in possession. Not only this, the defendant himself obtained a plot from the State Government as he was a sportsman but he sold that plot, therefore, the contention of learned counsel for the appellant that both the courts below wrongly reached to the conclusion of personal bonafide necessity, appears to be totally contrary on the evidence which were taken note of by the courts below. The courts below not only considered the evidence of the plaintiff and his witnesses but also considered the evidence of the defendant and his witnesses in detail. This finding of fact has not been vitiated by any reason and no substantial question of law is involved in this appeal.

In view of the above, this appeal is dismissed.

At this stage, learned counsel for the appellant prayed that he may be given some time to evict the house.

Learned counsel for the respondent submits that in fact, the appellant has already his own house and he also obtained a telephone connection for that house. It is also

submitted that his contention that the tenant is residing in that house stands disproved by the fact that he obtained telephone connection for his own house.

Looking to the totality of the facts, it will be just and proper to permit the appellant to occupy the premises for some time more.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of fifteen days that he shall hand over the vacant possession to the landlord by or before 30.11.2005 and shall pay all the arrears of rent and decreetal amount, if due, within a period of fifteen days from today, the decree under challenge shall not be executed till 1.12.2005. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court. In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

(PRAKASH TATIA), J.

S.Phophaliya